

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN SAVINO,

Plaintiff,

v.

Decision and Order

17-CV-915 (HBS)

Consent

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

On June 7, 2019, the Court issued a Decision and Order in which it granted plaintiff's motion for judgment on the pleadings, vacated the Commissioner's final determination, and remanded the case for further administrative proceedings. Dkt. No. 19. On September 20, 2019, in accordance with a stipulation between the parties, Dkt. No. 23, the Court awarded plaintiff attorney fees in the amount of \$6,688.37 under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. Dkt. No. 24.

On July 14, 2020, plaintiff's counsel filed a motion for an award of attorney fees in the amount of \$26,946.80, pursuant to 42 U.S.C. § 406(b). Dkt. Nos. 25, 29. Plaintiff's counsel advises that on June 27, 2020, the Commissioner issued a Notice of Award, based on a favorable decision, totaling \$107,787.20 in past-due benefits. Dkt. No. 25-2 at 2; Dkt. No. 28 at 2 n.1. Of that amount, the Commissioner withheld 25 percent—\$ 26,946.80—to pay any duly approved attorney fee.

Plaintiff's counsel has set forth details in the motion explaining the time spent on the case and how the amount sought is consistent with the attorney-client contract, the amount of time spent on the case, prevailing rates for the type of work performed, and the statutory cap for fees. After reviewing the motion papers, the Court finds that the request is in fact consistent with statutory authority and with cases that have addressed similar requests. *See generally, e.g., Gisbrecht v. Barnhart,*

535 U.S. 789 (2002); *Wurzer v. Comm'r*, No. 15-CV-6528 CJS, 2019 WL 3821897 (W.D.N.Y. Aug. 14, 2019); *Barone v. Saul*, No. 13-CV-896, 2019 WL 3296616, at *2 (W.D.N.Y. July 23, 2019).

Accordingly, the motion is granted. Plaintiff's counsel is hereby awarded \$26,946.80 in attorney fees under 42 U.S.C. § 406(b). Upon receipt, Plaintiff's counsel shall remit the previously awarded EAJA fee to plaintiff. See *Wurzer*, 2019 WL 3821897, at *2 ("Fee awards under both the EAJA and § 406(b) may be awarded, but the claimant's attorney must refund the claimant the amount of the smaller fee.").

SO ORDERED.

/s/ Hugh B. Scott
Hon. Hugh B. Scott
United States Magistrate Judge

DATED: September 17, 2020